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AUG 20 2007

Applicant: Dick et al.
Application No.: 10/689,485

REMARKS/ARGUMENTS

After the foregoing Amendment, claims 1, 3-6 are currently pending in this application. Claim 2 has been canceled without prejudice. Claims 7-18 have been added. No new matter has been introduced into the application by these amendments.

Claim Rejections - 35 USC §101

Claims 1-6 stand rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. Applicants respectfully disagree.

The invention set forth in claim 1 is a data packet for transmission over a random access channel comprising a preamble portion and a non-preamble portion wherein the preamble portion processing gain is higher than the non-preamble portion processing gain. The Examiner's statement in the detailed action, page 2, that "claim 1 is a data structure per se and is non-statutory under 35 USC 101.", is incorrect. Applicants are not simply claiming a data structure, as the Examiner is seemingly defining it, that stores data in a database, which the Examiner considers non-statutory subject matter. The data packet claimed by Applicant is used for the communication of information in a wireless communication system. The Examiner has provided no other support for this rejection, except that the data structure per

se is non-statutory subject matter. Therefore, the subject matter of claim 1 is patentable subject matter under 35 USC §101. It is respectfully requested that the Examiner withdraw the §101 rejection.

Claim Rejections - 35 USC §112

Claim 2 is rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicants have cancelled claim 2 in response to the Examiner's rejection.

Claim Rejections - 35 USC §103

Claims 1, 5 and 6 stand rejected under 35 U.S.C. §103(1) as being unpatentable over Akerberg (U.S. Patent No. 6,483,826) in view of Olds et al. (U.S. Patent No. 6,625,129). Applicants respectfully disagree.

The invention claimed in claims 1, 5 and 6 comprises a data packet for transmission over a random access channel, including a preamble portion and a non-preamble portion, each having an associated processing gain, wherein the preamble processing gain is higher than the non-preamble processing gain. Neither of the references cited by the Examiner discloses the present invention.

Regarding claim 1, Akerberg discloses an instant dynamic channel selection procedure, wherein the subscriber station selects a carrier/time-slot for sending an access request to the first system base station. The carrier/time-slot selected by the

first system subscriber station for sending an access request to the first system base station is also used for a traffic channel. Preferably, the first system subscriber station selects a least interfered carrier/time-slot as the carrier/time-slot for sending an access request to the first system base station.

As such, the system disclosed in Akerberg is not at all related to the system claimed by the present invention. Akerberg does not suggest or teach the use of a preamble portion and a non-preamble portion wherein the preamble portion is at a higher processor gain than the non-preamble portion. In fact, Akerberg simply discloses the common structure of a physical channel "being defined by a code, time-slot and frequency." *See* column 4, lines 7 and 8.

According to the detailed action, page 3, the Examiner has seemingly associated channels, time-slots or channel codes with the preamble portion and non-preamble portion. In fact, the Examiner states that Akerberg discloses "communicating packet data in a mobile communication system that utilizes CDMA with processing gain with the use of combination of frequency channels, time-slots or channel codes (non-preamble) such as RACH, which are used to transport communication data, wherein the architecture of a frame and bit structure are displayed along with time-slots, whereby the preamble is at the beginning of the slot followed by combination of channels, time-slots or channel codes, destination and source info. The Examiner further states that "Akerberg further discloses that

it is desirable or different and varying processing gain implemented on different channel connections (non-preamble) so as not to interfere with already existing calls, and more/high processing gain provide for more calls on the same slot." The Examiner, though, fails to recognize that the purpose of the Akerberg patent is for instant dynamic channel selection based on defining the least interfered channel using a radio signal strength indicator. Again, the invention of Akerberg is unrelated to the data packet comprising a preamble portion and a non-preamble portion, wherein the preamble portion processing gain is higher than the non-preamble portion processing gain. As clearly indicated in the Akerberg patent, all that is disclosed is the selection of a least interfered channel for transmission and receipt of communication data.

Likewise, the Examiner has overstated the disclosure in Olds. Olds discloses a method and apparatus to direct high gain uplink spot beams at particular UE devices in accordance with demand assign multiple access (DAMA) parameters when, and only when, the UE has traffic to transmit to a satellite. As such, Olds does not disclose the use of a data packet having a preamble and non-preamble portions wherein the preamble portion has a higher processing gain than the non-preamble portion. In fact, Olds simply discloses the use of higher gain uplink connections when the UE has traffic to transmit to a satellite. Accordingly, neither Akerberg nor Olds suggest or teach the invention as presently claimed. Therefore,

neither Akerberg nor Olds, along, or in combination with one another render the present invention obvious under §103.

Similarly, neither Akerberg nor Olds discloses the system as claimed in newly added claims 7-18. Claims 7-18 claim a method and apparatus comprising a convolutional encoder for formatting non-control data and a transmitter for transmitting a random access transmission having a preamble and a non-preamble portion. A factor applied to the formatted non-control data in the non-preamble portion differs from a gain factor applied to the other data. Again, neither Akerberg nor Olds discloses the present invention.

Regarding claim 3, Schramm similarly does not disclose a data packet. The data packet

Claims 3, 4, 5 and 6 are dependent upon claim 1, which the Applicants believe are allowable over the cited prior art of record for the same reasons provided above.

Claim 2 has been canceled.

Based on the arguments presented above, withdrawal of the §103 rejection of claims 1 and 3 – 6 is respectfully requested.

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Conclusion

If the Examiner believes that any additional minor formal matters need to be addressed in order to place this application in condition for allowance, or that a telephone interview will help to materially advance the prosecution of this application, the Examiner is invited to contact the undersigned by telephone at the Examiner's convenience.

In view of the foregoing amendment and remarks, Applicants respectfully submit that the present application, including claims 1 and 3 – 6, is in condition for allowance and a notice to that effect is respectfully requested.

Respectfully submitted,

Dick et al.

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